

IN THE MATTER OF:

MARKS & RICHARDS, INC.
d/b/a MARKS & RICHARDS,

TIM W. ALBERT,

GAYLE M. ALBERT,

Respondents.

BEFORE THE MARYLAND
STATE COLLECTION AGENCY
LICENSING BOARD

Case No.: DFR-EU-2009-050

FINAL ORDER TO CEASE AND DESIST

Statement of the Case

The hearing on the above-captioned matter was held on May 11, 2010 and heard on behalf of the State Collection Agency Licensing Board (the "Board") by Board chairman Sarah Bloom Raskin, and Board members Joanne Young and Stephen Hannan. This matter was scheduled for a hearing as a result of a Summary Order to Cease and Desist issued by the Board against the Marks & Richards, Inc., Tim W. Albert, and Gayle M. Albert ("Respondents") on June 23, 2009 (the "2009 Summary Order"). (Board Exhibit # 2). Respondents were alleged to have engaged in unlicensed Maryland collection agency activities in violation of Md. Code Ann., Business Regulation ("BR") § 7-301(a), and in violation of a previous Final Order to Cease and Desist issued by the Board against Marks & Richards, Inc..

The Board regulates and licenses persons who engage in collection agency activities in Maryland. The Board exists within the Office of the Commissioner of Financial Regulation. BR §§ 7-201 and 203. The Board issued the 2009 Summary Order pursuant to Md. Code Ann., Fin. Inst. ("FI") § 2-115.

Respondents were represented by Stephen Kleeman, Esquire. W. Thomas Lawrie,

Assistant Attorney General, appeared as presenter of evidence on behalf of the Board.

Christopher J. Young, Assistant Attorney General, served as counsel to the Board. The proceedings were electronically recorded.

Findings of Fact

From the testimony and exhibits presented, and with the opportunity to observe the demeanor of the witnesses and to assess their credibility, the Board finds the relevant facts to be these:

1. Marks & Richards, Inc. is a Maryland corporation. (Board Exhibit #12.)
2. Tim W. Albert is the president of Marks & Richards, Inc. and Gayle Albert is the company's vice president and resident agent. (Board Exhibit #13.)
3. Respondents were properly served with the Notice of Hearing in this matter. (Board Exhibit #1.)
4. Marks & Richards, Inc. held a Maryland collection agency license during the period from 2007 through 2008—until the license was revoked on April 22, 2008 as described in paragraph 6 below. (Board Exhibit # 6.)
5. The Board issued a Summary Order to Cease and Desist against Respondent, Marks & Richards, Inc., on March 13, 2008 (the "2008 Summary Order"), which resulted from the cancellation of the surety bond required for licensure by BR § 7-304(a). (Board Exhibit #5; Respondent Exhibits #7, 8, and 9.) The 2008 Summary Order was properly served on Respondent Marks & Richards, Inc. (Testimony of Julio Hernandez and Tim Albert.)
6. Respondent Marks & Richards, Inc. failed to request a hearing on the 2008 Summary Order, and on April 22, 2008 the Board entered the 2008 Summary Order as a Final

Order to Cease and Desist (the 2008 “Final Order”) and thereby revoked the collection agency license of Marks & Richards, Inc. (Board Exhibit #6). The 2008 Final Order was properly served on Respondent Marks & Richards, Inc. (Testimony of Julio Hernandez and Tim Albert.)

7. On January 26, 2009, the Office of the Commissioner of Financial Regulation (the “Commissioner”) commenced an investigation of Respondents in response to a complaint it received alleging that Respondents were engaging in unlicensed Maryland collection agency activity. (Board Exhibit #8; Testimony of Julio Hernandez.)

8. Respondents engaged in multiple instances of unlicensed Maryland collection agency activity after the issuance of the 2008 Final Order and the revocation of the Marks & Richards, Inc. Maryland collection agency license, as evidenced by the Marks and Richards, Inc. client list, customer contact log, and Collection Service Agreements, and by relevant testimony. (Board Exhibits #9, 10, and 11; Testimony of Tim Albert and Gayle Albert; Testimony of Julio Hernandez.)

9. Respondents acted cooperatively in the investigation conducted by the Commissioner and produced documents in response to a subpoena issued by the Commissioner. (Testimony of Julio Hernandez; Respondents Exhibit #10.)

10. As a result of the evidence produced by the Commissioner’s investigation, the Board issued the 2009 Summary Order against the Respondents requiring them to, among other things, immediately cease and desist from engaging in collection agency business activities pertaining to Maryland residents. (Board Exhibit #2.)

11. Respondents were properly served with the 2009 Summary Order and requested the hearing which was held in this matter. (Board Exhibits #3 and 4.)

12. Respondents have ceased all Maryland collection agency activity and Marks & Richards, Inc. has ceased operating as a going concern. (Testimony of Tim Albert and Gayle Albert.)

13. Respondent Tim Albert is currently unemployed. Respondent Gayle Albert only recently started a new job. The Alberts have experienced severe financial difficulties since Marks & Richards, Inc. ceased operations and as of the date of the hearing were facing the possible foreclosure of their home. (Testimony of Tim Albert and Gayle Albert.)

Discussion

The relevant facts in this case are not in dispute. The exhibits entered into evidence and the testimony of Tim and Gayle Albert, Investigator Julio Hernandez, and Board Administrative Officer Kelly Mack, support a finding that Respondents engaged in unlicensed consumer collection agency activities in violation of Maryland law. That is, Respondents acted as a “collection agency” by collecting “consumer claims” as those terms are defined in BR § 7-101(c) and (e). A person must have a collection agency license issued by the Board to do business as a collection agency in Maryland unless otherwise exempt. BR § 7-301(a).

The Maryland collection agency license of Marks & Richards, Inc. was revoked on April 22, 2008, as a result of the 2008 Final Order. Respondent Tim Albert was personally served the 2008 Final Order and the 2008 Summary Order which preceded it. There was no testimony or evidence to suggest that at any time relevant to this Final Order either Tim or Gayle Albert were licensed as a Maryland collection agency. Tim and Gayle Albert testified that after the license of Marks & Richards, Inc. was revoked, Respondents engaged in Maryland collection agency activities, in violation of both BR § 7-301(a) and the 2008 Final Order.

Given that Respondents admitted engaging in unlicensed collection agency activity after the issuance of the 2008 Final Order and the revocation of the Marks & Richards, Inc. license in violation of applicable law, the issue focused on at the hearing by Respondents was what sanctions are appropriate in this case. Respondents Tim and Gayle Albert essentially argue that there are three mitigating factors that the Board should consider in deciding sanctions.

First, the Alberts testified that they were unaware of the fact that Marks & Richards, Inc. was not duly licensed by the Board. This is despite the fact that Tim Albert, the company's president, was personally served with both the 2008 Summary Order and the 2008 Final Order which stated in capital letters that the license of Marks & Richards, Inc. was "REVOKED." Tim and Gayle Albert, through their testimony, suggested that they thought the surety bond issue which gave rise to the 2008 license revocation had been resolved, and that was the end of the matter. Investigator Hernandez testified that the Alberts expressed confusion on the issue of the license revocation when Mr. Hernandez personally served the Commissioner's subpoena on the Respondents in connection with the Commissioner's 2009 investigation.

Second, the Alberts testified that Respondents have shown good faith by cooperating in the Commissioner's 2009 investigation. The Alberts answered questions posed by Investigator Hernandez and they were forthcoming with the production of subpoenaed documents.

Third, the Alberts testified that since Marks & Richards, Inc. ceased operations, not only has the company failed but their personal finances have collapsed. The Alberts testified that Tim Albert has been out of work since the demise of Marks & Richards, Inc. and was unemployed as of the date of the hearing. Moreover, Gayle Albert was unemployed until recently. The Alberts each testified that they are facing foreclosure on their home.

In light of the above, the Board does find that there are mitigating factors to consider in determining sanctions in this case. Although the Board is not persuaded by the assertions by Tim and Gayle Albert that they were unaware that the license of Marks & Richards, Inc. was revoked by the 2008 Final Order, they do find credible the Alberts' testimony regarding their good faith in cooperating with the Commissioner in connection with the 2009 investigation. The fact that the Alberts cooperated in the investigation was corroborated by both Investigator Hernandez and by Board Administrative Officer Mack. The Board also finds credible the Alberts' testimony regarding the ruined finances of both Marks & Richards, Inc. and themselves. The fact that Marks & Richards, Inc. is no longer in business, that the Alberts are facing foreclosure on their home, and that Tim Albert remains unemployed, supports the assertions of financial distress.

Conclusions of Law

Based on the Findings of Fact, the Board concludes by a preponderance of the evidence that Respondents directly collected consumer claims from Maryland Residents on behalf of third parties without a license in violation of BR § 7-301(a). The Board further concludes that by engaging in this unlicensed collection activity after the issuance of the 2008 Final Order, Marks & Richards, Inc. violated a lawful order of the Board. Accordingly, Marks & Richards, Inc. is subject to such civil penalties as the Board may deem appropriate under BR § 7-205(c). Respondents are also subject to civil penalties under FI § 2-115(c).

In determining the amount of civil penalties, if any, that should be assessed against Respondents, the Board considered (1) the seriousness of the violation; (2) the good faith of the violator; (3) the violator's history of previous violations; (4) the deleterious effect of the violation on the public and the collection industry; (5) the assets of the violators; and (6) any other factors

relevant to the determination of the financial penalty. BR § 7-205(c); FI § 2-115(c).

The Board concludes after considering these factors that it is appropriate to forego assessing a civil penalty against Respondents in this case. More particularly, the Board finds that the fact that Respondents have shown good faith in this matter, that Marks & Richards, Inc. is a failed company (having ceased operations), and that Tim and Gayle Albert are experiencing such serious financial difficulties that they are facing the foreclosure of their home, outweigh the other factors.

Final Order

In consideration of the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED** that:

The 2009 Summary Order shall be entered as a **FINAL ORDER** and that Respondents shall **CEASE AND DESIST** from collecting consumer claims from Maryland residents in violation of BR § 7-301(a); and it is further

ORDERED, that this Final Order may be considered by the Board in future actions, if any, involving Respondents.

Pursuant to State Govt. Art., Section 10-222, any party who is aggrieved by this decision, may file a petition for judicial review with the Circuit Court for the county where any party resides or has a principal place of business. Such petition must be filed within 30

Days after Respondent's receipt of this Order (Md. Rule 7-203). The filing of a petition for judicial review does not automatically stay the enforcement of the Final Order.

STATE COLLECTION AGENCY LICENSING BOARD

By:

Sarah Bloom Raskin

Sarah Bloom Raskin, Chairman
Commissioner of Financial Regulation

June 14, 2010
Date